

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 867 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

C S UPADHYAY

Versus

SECRETARY TO THE GOVERNMENT OF GUJARAT

Appearance:

MR PH PATHAK for Petitioner

MR LR PUJARI, AGP for Respondent Nos. 1, 2, 3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 08/02/99

ORAL JUDGEMENT

The petitioner was working as a Section Officer in the Narmada Development Department of the State of Gujarat, now known as Narmada and Water Resources Department. The petitioner sought voluntary retirement and was permitted by the Government to voluntarily retire with effect from 31st July 1987. The petitioner states that he was entitled to the payment of retiral benefits

immediately after the effective date of retirement and should have been paid the retiral benefits on 1st August 1987. However, the due amount of gratuity was paid to him vide cheque dated 19th August 1988 for a sum of Rs.1,778.75 and vide cheque dated 23rd December 1988 for a sum of Rs.17,685/- after deducting a sum of Rs.20,661.15 against the recovery of House Building Advance. The petitioner also claims entitlement for commuted value of pension, i.e. one third of pension commuted for ten years. According to the petitioner, he was entitled to Rs.69,838.20 being the commuted value of pension out of which Rs.22,668.35 was paid to him after deducting Rs.15,096/- being interest on House Building Advance and this payment of Rs.22,668.35 was made vide cheque dated 19th August 1988 and the remaining amount of Rs.32,073.85 was paid vide cheque dated 23rd December 1988. The petitioner's grievance is about the loss of interest on account of the delayed payment and he has claimed interest at the market rate of 18% per annum for the period beyond 1.8.1987 till the dates of the actual payment. The present Special Civil Application was filed on 7th February 1991, the notice was issued by the Court on 8th February 1991 and the Rule was issued thereafter on 9th December 1991. An affidavit-in-reply has been filed on behalf of the respondent no.1 saying that they have taken all steps for expeditious payment. However, in the reply, nothing has been stated on the basis of which it can be said that there was any lapse on the part of the petitioner for the delayed payment. While it has been admitted that the petitioner was permitted to voluntarily retire with effect from 31.7.1987, it has also been stated that the Central Administrative Tribunal, Ahmedabad Bench, at Ahmedabad, where the petitioner was working on deputation, had forwarded the pension papers of the petitioner on 20th June 1987. A reference has then been made to the correspondence with the Accountant General and it has been submitted that there is no provision in the Government to pay interest on the delayed payment of commuted value of pension. However, the learned Assistant Govt. Pleader himself admits that the reply is conspicuously silent about the Government Resolution dated 13th May 1986 whereby the rates of interest on delayed payment of Death-Cum-Retirement-Gratuity have been revised and fixed as under:

- (1) Beyond 3 months and upto one year - 7% per annum
- (2) Beyond one year -10% per annum

2. Having heard learned Counsel for both the sides and having gone through the pleadings, it is quite clear

that, there is no lapse on the part of the petitioner for the delayed payment of Gratuity and commuted value of pension and the petitioner remained deprived of his dues for the period on and from 1.8.1987 till the dates of payment, i.e. 19th August 1988 for a sum of Rs.1,778.85, upto 3rd December 1988 for a sum of Rs.17,865/- against Gratuity; for a period upto 19th August 1998 for a sum of Rs.22,665.35 and for the period upto 23rd December 1988 for a sum of Rs.32,073.85 against pension. The learned Counsel for the petitioner has relied upon a decision of the Supreme Court in the case of State of Kerala and ors. v. M.Padmanabhan Nair, reported in AIR 1985 SC 356. In this decision, the Supreme Court has noted that, since the date of retirement of every Government servant is very much known in advance, why the process of collecting the requisite information should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be paid to the Government servant on the date he retires or on the following day and pension at the expiry of the following month. The necessity for prompt payment of the retirement dues to the Government servant immediately after his retirement cannot be overemphasised and it would not be unreasonable to direct that the liability to pay the penal interest on this dues at the current market rate should commence at the expiry of two months from the date of retirement. In the facts of this case before the Supreme Court, the respondent had retired on 19th May 1973, but the pension and gratuity were ultimately paid to him on 14th August 1975, i.e. more than two years and three months after his retirement. In this case, as against the interest claimed at the rate of 12% per annum, the High Court had granted at the rate of 6% per annum. However, in this case, before the Supreme Court, there is no reference about any rate of interest being fixed by the Government order or Circular or Resolution about the fixing of the rates, whereas in the present case, in relation to gratuity, the Government Resolution dated 13th May 1986 has been placed on record to which the reference has already been made in the earlier part of this order. The petitioner has also claimed interest on the amount of the interest for the period beyond August 1988 and December 1988 and it has been argued that had payment been made in time, the petitioner would have earned further interest on the amount of interest also.

3. In the facts and circumstances of this case, it is ordered that the petitioner shall be paid the interest for the period of delay as aforesaid in respect of the amount of gratuity in terms of the Government Resolution dated 13th May 1986, i.e. beyond three months and upto

one year at the rate of 7% per annum and at the rate of 10% per annum for the period beyond one year, so far as the delayed payment of gratuity is concerned. With regard to the delayed payment of pension with regard to which the Government has taken the stand that there is no provision for interest on commuted value of pension, it is directed that the petitioner shall be paid interest for the delayed payment of pension at the same rate as has been fixed by the Government with regard to the delayed payment in the case of gratuity. So far as the petitioner's claim with regard to further interest on the amount of interest for the period beyond August 1988 and December 1988 is concerned, with regard to the amounts of gratuity and pension, this Court finds that instead of directing the payment of further interest on the amount of interest, ends of justice will be met if the petitioner is compensated by a lumpsum amount of Rs.10,000/- (Rupees Ten thousand only) to be paid to the petitioner in lieu of further interest on the amount of interest for the period from August 1988 and December 1988 onwards. The due amount in terms of this order shall be computed for the periods indicated as above in respect of the amounts mentioned in this order in accordance with the Government Resolution dated 13th May 1986 and in respect of the amount of gratuity and by applying the same rates to the amount of pension and the entire due payment including the compensation of Rs.10,000/- shall be paid into the hands of the petitioner at the earliest possible opportunity, but in no case later than 8th April 1999. In case the entire due amount as ordered above is not paid into the hands of the petitioner even by 8th April 1999, the petitioner shall be entitled to interest on this entire amount after 8th April 1999 at the rate of 18% per annum. This Special Civil Application is allowed in terms as aforesaid and the Rule is made absolute in the terms as aforesaid. No order as to costs.

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